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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

MAGDI GERGAUWY and ALISA
GERGAUWY, a married couple;

Plaintiffs,

vs.

UNITED STATES BAKERY, INC.,
d/b/a FRANZ FAMILY BAKERIES, an
Oregon Corporation; and
OCCUPATIONAL HEALTH
SOLUTIONS, INC., a Washington
Corporation, and TAMI KINNUNEN,
an individual,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
JURY DEMAND**

I. PARTIES, JURISDICTION, AND VENUE

1.1 Magdi and Alisa Gergawy are residents of Spokane County,
Washington, in the Eastern District of Washington. Mr. and Mrs. Gergawy assert

1 the below causes of action on behalf of themselves, individually, and on behalf of
2 their marital community.

3
4 1.2 United States Bakery, Inc., d/b/a Franz Family Bakeries is a self-
5 insured, for profit Oregon corporation authorized to do business in the State of
6 Washington. Venue is appropriate under 28 U.S.C. §1391(b) because the events
7 giving rise to this Complaint occurred in this district. Venue is also appropriate
8 under the special venue provision of 42 U.S.C. §2000e-5(f)(3) because Spokane
9 County, the Eastern District of Washington, specifically, is where the unlawful
10 employment practice is alleged to have been committed, where the employment
11 records relevant to such practice are maintained and administered and where
12 Plaintiff Magdi Gergawy is working despite ongoing alleged unlawful employment
13 practices.
14
15

16 1.3 Occupational Health Solutions, Inc. is a for profit Washington
17 corporation offering occupational health services, including third-party claims
18 handling, with its principal place of business located in Spokane, Washington.
19

20 1.4 Upon information and belief, Tami Kinnunen is a resident of Spokane
21 County, Washington and a Workers' Compensation Specialist with Defendant,
22 Occupational Health Solutions, Inc., who committed acts of discrimination,
23 retaliation, and tortious conduct within the Eastern District of Washington.
24
25

1 2.6 Instead of allowing Mr. Gergawy to leave, Mr. White dismissed other
2 employees with less seniority, and no FMLA leave, who were white, non-
3 Egyptian, and qualified to replace Mr. Gergawy and then denied Mr. Gergawy's
4 request stating, "There were no qualified employees to replace him."

5
6 2.7 Mr. Gergawy is continually passed over for promotion by younger,
7 non-disabled, white workers with less experience.

8
9 2.8 Most recently, last week, Franz promoted two white, non-disabled,
10 less experienced employees to a foreman position.

11 2.9 Of the 17 foremen employed by Franz, only 4 have more experience
12 than Mr. Gergawy.

13 2.10 On January 23, 2018, Mr. Gergawy signed up for foreman training.

14
15 2.11 To current date, Franz has not provided the requested foreman
16 training to Mr. Gergawy.

17 2.12 Instead, Franz continued to promote younger, white, , non-disabled
18 workers with less experience and seniority to foreman positions, without training.

19
20 2.13 The younger, white, non-disabled workers with less experience have
21 not completed any type of training.

22 2.14 On July 9, 2018, Mr. Gergawy suffered a work-related injury.

23 2.15 Mr. Gergawy was off work for approximately one month and then
24 returned to work with some restrictions.
25

1 2.16 On November 2, 2018, Mr. Gergawy was released back to work, with
2 no restrictions.

3 2.17 On December 3, 2018, Mr. Gergawy was again placed on medical
4 leave which continued through February 8, 2019. Though still suffering severe
5 pain from the work-related injury, Mr. Gergawy was released back to work without
6 restrictions. In addition to being released back to work, Franz ordered Mr.
7 Gergawy attend a medical examination.
8

9 2.18 Mr. Gergawy attended the scheduled medical examination on April
10 24, 2019.
11

12 2.19 On May 6, 2019, Mr. Gergawy was in severe pain, hunched over and
13 unable to stand-up straight.
14

15 2.20 Mr. Gergawy went to see, Scott Pleines, PA-C who placed Mr.
16 Gergawy on a medical leave for 21 days and scheduled a follow-up appointment
17 for May 28, 2019.
18

19 2.21 Following his appointment, Mr. Gergawy went to Franz to provide
20 Franz with the paperwork documenting his medical restrictions.

21 2.22 While at Franz, Safety Coordinator, April McDonough, witnessed Mr.
22 Gergawy's suffering and demanded he go to the emergency room.
23

24 2.23 Ms. McDonough drove Mr. Gergawy to the emergency room in a
25 company vehicle.

1 2.24 Mr. Gergawy's medical leave was reported to Tami Kinnunen,
2 Workers' Compensation Specialist for Occupational Health Solutions, Inc.
3 (hereinafter "OHS").
4

5 2.25 At that time, OHS administered worker compensation claims on
6 behalf of Franz.

7 2.26 Ms. Kinnunen, disputed the findings of Scott Pleines, indicating the
8 results of the April 24, 2019 medical evaluation showed Mr. Gergawy to be at
9 maximum medical improvement.
10

11 2.27 Ms. Kinnunen is not a doctor or a physician's assistant.

12 2.28 Ms. Kinnunen informed Mr. Gergawy that she was calling Scott
13 Pleines' office and scheduling an appointment for Mr. Gergawy to return to Mr.
14 Pleines office and review the results of the April 24, 2019 medical evaluation.
15

16 2.29 Ms. Kinnunen scheduled a follow-up appointment for Mr. Gergawy
17 on May 9, 2019.

18 2.30 On May 6, 2019, following Scott Pleines' medical evaluation of Mr.
19 Gergawy, Ms. Kinnunen sent Mr. Pleines a copy of the medical evaluation report.
20

21 2.31 On May 9, 2019, at approximately 8:02 in the morning, Ms.
22 McDonough texted Mr. Gergawy instructing him to obtain documentation from
23 Scott Pleines, releasing him to work.
24
25

1 2.32 Despite having performed his own medical evaluation of Mr.
2 Gergawy on May 6, 2019, Scott Pleines, changed his medical opinion regarding
3 Mr. Gergawy's pain to "kidney stones," and released Mr. Gergawy back to work.
4

5 2.33 Since May of 2019, Mr. Gergawy has never passed a kidney stone.

6 2.34 Between May 6, 2019 and May 9, 2019, Mr. Pleines performed no
7 diagnostic studies for kidney stones, and conducted no examination that would
8 have shown kidney stones.
9

10 2.35 On July 12, 2019, OHS wrongfully denied and closed Mr. Gergawy's
11 claim.

12 2.36 Mr. Gergawy disputed the findings of the medical evaluation with
13 Franz, specifically Jim Grantham, and informed Mr. Grantham he planned to take
14 legal action.
15

16 2.37 Mr. Gergawy then filed a complaint with the Equal Employment
17 Opportunity Commission on July 31, 2019, including the above-referenced facts.
18

19 2.38 Following the filing of the EEOC complaint, Franz engaged in five
20 separate acts of retaliation against Mr. Gergawy including intensifying his work-
21 load; giving one of his weekend days off to a younger, non-disabled employee with
22 less seniority; threatening to install security cameras in his work area despite
23 security cameras being negotiated in the collective bargaining agreement; refusing
24 to apply his FMLA leave and listing his absences as unexcused, without pay, and
25

1 initiating an attempted write-up; and denial of the reopening of his Labor and
2 Industries claim.

3 2.39 Since the closing of his Labor and Industries claim, Mr. Gergawy
4 sought medical treatment at his own expense.

6 2.40 Mr. Gergawy's current provider, P.Z. Pearce, MD, disputes the
7 finding of the medical evaluation which states Mr. Gergawy is at, "maximum
8 medical improvement" and instead recommends additional treatment is necessary.

10 2.41 On October 28, 2019, attorney for Franz, Jon Floyd, engaged in
11 claims suppression on behalf of his client, Franz, by inducing Mr. Gergawy to treat
12 injuries sustained during the course of employment as off-the-job injuries
13 following notice of Dr. Pearce's findings. These acts of claims suppression are in
14 direct retaliation for filing the EEOC complaint and in violation of RCW
15 51.28.010(4)(b)&(c).

17 2.42 Mr. Gergawy has incurred lost wages, lost medical treatment, worked
18 through pain unnecessarily, lost overtime, lost promotions, and lost days of work
19 due to Franz's actions.

21 III. CAUSES OF ACTION

22 A. Retaliation in Violation of Public Policy Wrongful/Illegal Retaliation- 23 *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46(1991)

24 3.1 Plaintiffs re-allege and incorporates by reference paragraphs 1.1-2.42
25 as if set forth fully herein.

1 3.2 Plaintiffs assert the common law tort of retaliation for Labor and
2 Industries claims in violation of public policy as outlined in *Wilmot v. Kaiser*
3 *Aluminum*, 118 Wn.2d 46 (1991).
4

5 3.3 Plaintiff, Magdi Gergawy was intentionally retaliated against as a
6 result of his lawful Labor and Industries claims, EEOC complaint, and for seeking
7 and receiving benefits from such a claim.
8

9 3.4 A Labor and Industry claim was filed by Mr. Gergawy and is ongoing
10 and unresolved at this time.

11 3.5 Mr. Gergawy's Labor and Industries claim for injury was a substantial
12 factor in Franz failing to promote Mr. Gergawy and in taking away one of Mr.
13 Gergawy's weekend days off.
14

15 3.6 Franz knew of Mr. Gergawy's Labor and Industries claim and is
16 disputing and denying authorization for his related treatment.

17 3.7 It is against the public policy of the State of Washington to retaliate
18 against an employee because of his filing of a Labor and Industries claim.
19

20 3.8 Franz retaliated against Plaintiff and continues to retaliate against
21 Plaintiff because of his claim with Labor and Industries and complaint to the
22 EEOC, in violation of this public policies. Allowing such a retaliation jeopardizes
23 public policy in favor of reporting Labor and Industries violations. Invoking an
24
25

1 EEOC complaint as a basis for relationship in and L&I proceeding and within an
2 employment relationship also violates Washington State policies.

3 3.9 Franz refused to promote Mr. Gergawy substantially due to his filing
4 of a Labor and Industries claim.
5

6 3.10 Franz, through their agent OHS, specifically through their agent Tami
7 Kinnunen, called, Scott Pleines, violating patient-physician privilege, and
8 instructed Mr. Pleines to change his diagnosis and work restrictions for Mr.
9 Gergawy.
10

11 3.11 Franz has improperly worked to delay Mr. Gergawy's treatment for
12 work-related injuries.

13 3.12 Franz, in retaliation for Mr. Gergawy's Labor and Industries claim,
14 has violated Mr. Gergawy's patient-physician privacy.
15

16 3.13 Franz is vicariously liable and otherwise responsible for all other
17 Defendants and the acts of their agents in the L&I claims reporting and their agents
18 interference in the L&I claim treatments through the theories of contract, agency,
19 apparent agency, joint venture, joint and several liability, master/servant,
20 employer/employee, and joint tortfeasor.
21

22 3.14 As a proximate cause of Defendant Franz's harassment and
23 discrimination, Plaintiffs have been damaged in amounts to be proved at the time
24 of trial.
25

B. Negligent Supervision

3.15 Plaintiffs re-allege and incorporate by reference paragraphs 1.1-3.14 as if set forth fully herein.

3.16 Defendant Franz had a duty to undertake a reasonable investigation into hiring and /or promoting employees and to provide reasonable supervision of its existing employees.

3.17 Defendant Franz breached its duty, including without limitation, the duty to reasonably investigate and supervise the hiring, promotion/training and overall supervisor role of employment of Mr. Gergawy's supervisor, Quincy White and Jim Granthum.

3.18 Defendant Franz knew or should have known that failure to perform a reasonable investigation and to supervise its employees, including Quincy White and Jim Granthum, could result in harm to Mr. Gergawy.

3.19 Following the filing of Mr. Gergawy's EEOC complaint, Franz had a duty to prevent retaliation by Mr. Gergawy's supervisors and other agents of Franz. By failing to prevent such retaliation, Franz has engaged in negligent supervision of its supervisors.

3.20 The breaches of duty by Franz have caused Plaintiffs' damages.

1 **C. Violations of the State and Federal FMLA**

2 3.21 Plaintiffs re-allege and incorporate by reference paragraphs 1.1-3.20
3 as if set forth fully herein.
4

5 3.22 Pursuant to 29 U.S.C. §2615, it is unlawful for any employer to
6 interfere with, restrain, or deny the exercise of or the attempt to exercise and
7 employee's right to FMLA. Washington's comparable state FMLA wholly adopts
8 the federal interpretation of the Federal Act for purposes of interpreting state law.
9

10 3.23 Franz interfered with, restrained, and/or denied Mr. Gergawy's
11 attempt to exercise his FMLA rights to take care of his disabled wife.

12 3.24 Mr. and Mrs. Gergawy, and their marital community, were damaged
13 by Franz's interference, restraint, and denial of Mr. Gergawy's attempts to exercise
14 his FMLA rights.
15

16 **D. Violation of Age Discrimination in Employment Act 29 U.S.C. 621 et**
17 **seq., American Disability Act 42 U.S.C. §2000 et. seq., and Washington Law**
18 **Against Discrimination RCW 49.60.010 et seq., Age, Disability**

19 3.25 Plaintiffs re-allege and incorporate by reference paragraphs 1.1-3.24
20 as if set forth fully herein.

21 3.26 The Age Discrimination in Employment Act (ADEA) makes it
22 unlawful for an employer to discharge any individual or otherwise discriminate
23 against any individual with respect his "compensation, terms, conditions, or
24 privileges of employment," because of such individual's age. The words
25

1 “compensation, terms, conditions, or privileges of employment” encompass all
2 employee benefits, including such benefits provided pursuant to a bona fide
3 employee benefit plan.
4

5 3.27 RCW 49.60.180 makes it unlawful for an employer to discharge an
6 employee on account of that employee’s age or disability status.

7 3.28 In order to state a claim under the ADEA an employee must establish
8 that he was older than forty years of age, was performing his work satisfactorily,
9 and was treated differently in regard to the terms and conditions of his employment
10 due to his age.
11

12 3.29 To state an age discrimination claim under the WLAD, an employee
13 only need establish that his age was a substantial factor in the employer’s decision
14 to alter the terms and conditions of his employment.
15

16 3.30 Mr. Gergawy is over forty years of age, was performing his work
17 satisfactorily prior to Franz’s discrimination and retaliation detailed in the “facts”
18 section of this Complaint.
19

20 3.31 Defendants willfully violated Plaintiff right to be free from age
21 discrimination as guaranteed by the ADEA, specifically by depriving Plaintiff of
22 opportunities to advance his employment at Franz and altering the terms and
23 conditions of his employment.
24
25

1 3.32 Defendant Franz's violation of the ADEA proximately caused
2 Plaintiffs to suffer damages.

3 3.33 Plaintiffs, and the marital community thereof, seek all remedies,
4 damages, penalties, costs, and attorney fees available under the ADEA.
5

6 **E. Violation of American Disability Act, ADAAA, 42 U.S.C. §2000 et**
7 **seq./WLAD, RCW 49.60 et seq.**

8 3.34 Plaintiffs re-allege and incorporate paragraphs 1.1-3.33 as if set forth
9 fully herein.
10

11 3.35 In order to state a claim for disability discrimination under the ADA,
12 ADAAA, and the WLAD an employee must establish membership in a protected
13 class, an adverse employment action, satisfactory performance, and that his
14 membership in a protected class was a motivating or substantial factor in the
15 adverse employment action.
16

17 3.36 Mr. Gergawy has a disability as described under 42 U.S.C. §2000 et
18 seq.
19

20 3.37 Franz has conceded that Mr. Gergawy has a disability in writing.

21 3.38 Alternatively, Mr. Gergawy is perceived as being disabled by
22 Defendants as described in 42 U.S.C. §2000 et seq.
23
24
25

1 3.39 Mr. Gergawy was qualified for the foreman position and for foreman
2 training and able to perform the essential elements of each, with or without
3 accommodation.
4

5 3.40 Mr. Gergawy was qualified for his current position and able to
6 perform the essential elements of that position with a reasonable accommodation.
7

8 3.41 Mr. Gergawy is, and has been, qualified to work as a foreman and
9 perform the essential elements of the foreman position with reasonable
10 accommodation.
11

12 3.42 Franz refused to provide Mr. Gergawy a reasonable accommodation
13 to perform the essential functions of his current position.
14

15 3.43 Franz failed and refused to train and promote Mr. Gergawy to
16 foreman due to his disability or alternatively, Franz's perception of Mr. Gergawy
17 as being disabled.
18

19 3.44 Franz provides accommodations to non-disabled, white workers in
20 similar positions as Mr. Gergawy.
21

22 3.45 Franz trains and promotes non-disabled workers, outside of Mr.
23 Gergawy's protected status, to foreman positions.
24

25 3.46 OHS utilized Ms. Kinnunen as a Workers' Compensation Specialist
to handle Mr. Gergawy's Labor and Industries claim.

1 3.47 Ms. Kinnunen and OHS engaged in L&I claim suppression while
2 acting on behalf of Franz.

3 3.48 Ms. Kinnunen exceeded her role as a Workers' Compensation
4 Specialist with the knowledge of OHS and Franz to discriminate against Mr.
5 Gergawy as an individual with an injury and disability.
6

7 3.49 All acts of Ms. Kinnunen were done on behalf of OHS and Franz.

8 3.50 Franz has no immunity for intentional acts in violation of RCW 51.28
9 claims suppression statutes.
10

11 3.51 Ms. Kinnunen is not a medical doctor, never received Mr. Gergawy's
12 consent to provide a new diagnosis for Mr. Gergawy, nor have any factual basis to
13 do so.
14

15 3.52 Within a Labor and Industries claim Franz, OHS, and Ms. Kinnunen
16 have no legal authority to order a treatment provider to change that treatment
17 provider's work restrictions.
18

19 3.53 All this above referenced behavior violated the WLAD as it
20 constitutes discrimination in trade/commerce that discriminated against Mr.
21 Gergawy as a person with a disability, over 40, and of a minority race and from
22 Egypt.
23

24 3.54 Alternatively, Ms. Kinnunen and OHS while violating the WLAD,
25 and other state laws, were acting as employer on behalf of Franz Bakery .

1 Alternatively, they occurred in trade or business and are actionable under the
2 combined mandate of the Consumer Protections Act and WLAD.

3 3.55 Franz's acts and omissions in violating the ADA and WLAD in
4 conjunction with the acts and omissions of the other defendants has proximately
5 caused Plaintiffs damages. Mr. and Mrs. Gergawy seek all damages authorized
6 under WLAD, the Consumer Protection Act, the ADA, ADAA, and 42 U.S.C
7 2000e et seq.
8

9 10 **IV. PRAYER FOR RELIEF**

11 Plaintiffs respectfully pray for:

12 (a) Compensation for all injury and damages suffered by Mr. and Mrs.
13 Gergawy, including but not limited to, both economic and non-economic damages,
14 in an amount to be proven at trial, including back pay, front pay, pre and post
15 judgment interest, lost benefits of employment, adverse tax consequences of any
16 award for economic damages pursuant to Chapter RCW 49.60 et seq., liquidated
17 damages under both federal and Washington law for willful violations as it relates
18 to the lost back and front pay, wages and benefits, exemplary damages, punitive
19 damages, and Plaintiff respectfully pray that this Honorable Court enter and Order
20 providing Mr. and Mrs. Gergawy all remedies available to them including but not
21 limited to an award of:
22
23
24
25

1 (b) pecuniary losses suffered as a result of the wrongful termination of
2 Plaintiff's employment, to include, but not limited to, back pay, front pay, and all
3 attendant benefits, with interest;
4

5 (c) compensatory and general damages suffered by Plaintiff as a result of all
6 forms of discrimination and retaliation;

7 (d) costs and reasonable attorneys' fees incurred with this lawsuit as
8 permitted by statute under the Washington Law Against Discrimination, the
9 Consumer Protection Act, Title VII, the ADA, and the ADEA;
10

11 (e) punitive damages and penalties under federal law and the Consumer
12 Protection Act;

13 (f) all such other relief or damages as authorized under the ADA, ADAAA,
14 CPA, WLAD, ADEA or Washington common law;
15

16 (g) general damages, emotional distress, pre and post judgment interest,
17 penalties, attorneys' fees costs and special damages including loss of wages due to
18 Franz's failure to promote Mr. Gergawy and their disallowing him overtime on a
19 discriminatory basis; and
20

21 ///

22 ///

23 ///

24 ///

25 ///

1 (h) such other and further relief as the Court deems just or equitable.

2 Dated this 4th day of December 2019.

3 BEST LAW, PLLC

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